

REMARKS

Claims 4, 6-8, 10, 12 and 14-19 are pending and stand ready for further action on the merits. Claims 1-3, 5, 9, 11 and 13 have been cancelled.

The Examiner has restructured the prior art based rejections as follows:

- (a) Claims 4, 6-8, 10, 12 and 14-19 are rejected under 35 U.S.C. § 103(a) as being obvious over JP 50129361 (hereinafter JP '361) in view of Szoka et al., USP 4,394,149; and
- (b) Claims 4, 6-8, 12, 14, 15, 17 and 19 are rejected under 35 U.S.C. § 103(a) as being obvious over BE 892401 (hereinafter BE '401) in view of Szoka et al.

Applicants respectfully traverse each of the rejections.

In Applicants' July 29, 2004 Amendment, Applicants amended the claims to recite that the plant-activating agent is in a concentration of 0.01 to 500 ppm. Applicants maintain the position that the cited references fail to teach or fairly suggest this concentration range for the plant-activating agent. Applicants' comments regarding the patentable distinctions between the inventive plant-activating compositions and methods and the teachings of the cited prior art, as described in the July 29, 2004, are herein incorporated by reference in their entirety.

Furthermore, Applicants respectfully submit that the inventive concentration range for the plant-activating agent of 0.01 to 500

ppm provides a plant-activating composition having unexpectedly superior properties to the composition of the cited prior art. As evidence of these unexpectedly superior properties, Applicants enclose herewith a Declaration Under 37 C.F.R. § 1.132 by Mr. Tadayuki Suzuki, one of the co-inventors of the present application.

In the enclosed Declaration, Mr. Suzuki compared two compositions having the stearic acid in a concentration of 60 ppm and 500 ppm, respectively with the closest operative embodiments of BE '401 and JP '361. As noted on the last full paragraph of page 11 of the July 29, 2004 Amendment, the composition of Example 6 of BE '401 has a concentration range for stearic acid of 2550 ppm. In the Declaration, this composition was prepared and is now labeled as Comparative Product No. 2. In addition, the closest operative embodiment of JP '361 to the present invention is Example 6 as described on the top of page 13 of the July 29, 2004 Amendment. Example 6 of JP '361 has a concentration range for stearic acid of 980 ppm. This Comparative Example is identified as Comparative Product No. 1 in the attached Rule 132 Declaration.

The test results are reproduced herein for the Examiner's convenience in the following Table:

Table

	No.	Plant-activating composition	Concentration (ppm)	Test result
				Fresh- weight
Inventive product	1	C18 fatty acid POE(80) polyoxyethylene hardened (or hydrogenated) caster oil [EMANON CH-80]	60 300	148
	2	C18 fatty acid POE(80) polyoxyethylene hardened caster oil [EMANON CH-80]	500 300	138
Comparative product	1	C18 fatty acid POE(80) polyoxyethylene hardened caster oil [EMANON CH-80]	980 300	106
	2	C18 fatty acid POE(80) polyoxyethylene hardened caster oil [EMANON CH-80]	2550 300	102
Treated with a liquid fertilizer, but non-treated			-	100

Upon comparing the activity of Comparative Product No. 1 (JP '361 composition) with Inventive Product No. 2 is that the fresh weight of the plant treated with the inventive composition improved 30% over the fresh weight of the plant treated with the prior art composition. Even larger improvements can be found when comparing Inventive Product No. 1 with Comparative Product No. 1 (40%) and with comparing Inventive Products 1 and 2 with Comparative Product 2 (45% and 35%, respectively).

As noted in the Declaration, such improvements would not be expected based upon the teachings of any of the cited references in any combination. For example, Szoka et al. shows that stearic acid is used as an anti-foaming agent. Also, BE '401 teaches that stearic acid is used as an evaporating suppressing agent to reduce damage of plant at transplantation. There is no teaching or suggestion regarding the criticality of the inventive concentration range on plant growth promotion effects as was first found by the present inventors.

Furthermore, the skilled artisan would reasonably conclude that the unexpected properties would be found for plant-activating agents containing stearic acid over the entire range of 0.01 to 500 ppm based on the experimental evidence in the Rule 132 Declaration.

In view of the fact that the presently claimed composition and method which incorporates stearic acid in a range of 0.01 to 500 ppm has unexpectedly superior properties to the compositions of BE '401, Szoka et al. and JP '361, a *prima facie* case of obviousness cannot be said to exist. Accordingly, withdrawal of the rejections are respectfully requested.

Conclusion

In view of the above comments, Applicants respectfully submit that the claims are in condition for allowance. A Notice to such effect is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact **Garth M. Dahlen, Ph.D., Esq.** (Reg. No. 43,575) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.


Respectfully submitted,

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By 

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Attachment: Declaration of Tadayuki Suzuki